

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YOSEF LOWENBEIN,

Plaintiff, :

REPORT &
RECOMMENDATION
11-CV-1293 (DLI)(SMG)

-against-

ERIC M. BERMAN, P.C.,

Defendants. :

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Plaintiff filed this case as a putative class action brought pursuant to the Fair Debt Collection Practices Act on March 17, 2011. Defendant was apparently served on August 22, 2011. Docket Entry 5. Plaintiff moved for entry of default on October 4, 2011, and the Clerk noted defendant's default the following day. Docket Entries 6 and 7.

On October 5, 2011, United States District Judge Irizarry issued an Order directing plaintiff to explain how he intended to litigate this case as a class action and the legal basis for doing so. Order dated October 5, 2011. Plaintiff responded by letter dated October 7, 2011, and suggested that he would undertake further proceedings, including issuing a subpoena to obtain information about defendant's net worth and the size of the putative class, in November, 2011. Docket Entry 9.

This case was assigned to me on December 9, 2011. Because it appeared that plaintiff had failed to take any action since submitting his letter on October 7, 2011, I directed plaintiff to submit a report with respect to the status of the case by January 13, 2012. In response, on December 30, 2011, plaintiff submitted another short letter reiterating his intention to issue a subpoena for information about net worth and numerosity. Docket Entry 10. In light of plaintiff's lack of activity, I issued an Order on January 3, 2012, directing plaintiff either to move for entry of a default judgment or submit a proposed case management order by January 23, 2012. Plaintiff has done neither, and has not otherwise responded to the Court's Order.

Accordingly, I respectfully recommend that this case be dismissed with prejudice and that the Clerk of the Court close the case unless plaintiff complies with my Order within the time for filing objections to this Report and Recommendation. Any objections to this Report and Recommendation must be filed within fourteen days of this Report and in any event no later than February 13, 2012. Failure to file objections within the specified time may waive the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72; *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

/s/

STEVEN M. GOLD
United States Magistrate Judge

Dated: Brooklyn, New York
January 25, 2012